

SENATE BILL REPORT

SB 5226

As Reported By Senate Committee On:
Government Operations & Elections, February 1, 2007

Title: An act relating to funding of judicial election campaign expenses.

Brief Description: Providing for public funding of judicial campaigns.

Sponsors: Senators Oemig, Fairley, Rockefeller, Kohl-Welles and Kline; by request of Governor Gregoire.

Brief History:

Committee Activity: Government Operations & Elections: 1/25/07, 2/01/07 [DPS-WM, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5226 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member; Benton and Swecker.

Staff: Sharon Swanson (786-7447)

Background: Current law limits the amount of money individuals and organizations can contribute to the campaigns of candidates for legislative and statewide offices, including judicial candidates. There is no limit on independent expenditures or on the amount of personal money a candidate can spend on his or her campaign.

Several states, including Arizona and Maine, have enacted alternative campaign financing programs which provide public funding to candidates who agree to forgo private campaign contributions and limit the amount of personal money spent on the campaign.

Washington State law provides that candidates pay a filing fee at the time they file for office. The fee is equal to one percent of the annual salary for the office sought. The filing fee is calculated according to the salary of the office at the time of filing. The filing fee for a state supreme court race is \$1,413.94. The fee for a court of appeals position is \$1,345.98.

Summary of Bill: A voluntary pilot program to allow a public campaign funding system is created for candidates for the court of appeals and state supreme court judicial positions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Public Disclosure Commission (PDC) will determine if a candidate has met all the requirements for participation in the program.

Once a candidate has qualified to participate in the program, the candidate may not raise or receive any additional funds.

Public Financing: Supreme court candidates in a contested primary or general election must receive a primary disbursement of 60 times the candidate filing fee.

Court of appeals candidates in a contested general election must receive a disbursement of eight times the filing fee. Court of appeals candidates do not receive primary disbursements.

Disbursements must be made within three days of certifying as a candidate for a contested primary or three days after qualifying as a candidate for a contested general election.

Clean Campaign Pledge: The Washington State Commission on Judicial Conduct must develop a clean campaign pledge that a participating candidate must agree to. The pledge must include, at a minimum:

- a requirement that participating candidates include in all campaign communications a declaration that he or she is running a clean campaign under the Act;
- a pledge from participating candidates not to use funds for disparaging or disrespectful communications;
- a pledge from participating candidates to publicly request that no independent expenditures be made favoring the participating candidate or opposing competing candidates;
- a pledge to participate in at least one judicial forum; and
- a candidate who withdraws or is removed from participation in the program must identify that fact in all campaign communications.

Qualifying Contributions: In order to qualify for participation, a candidate for the supreme court must raise at least 10 thousand dollars and not more than 50 thousand dollars from at least 500 contributors.

A candidate for the court of appeals must raise at least two thousand dollars and not more than 10 thousand dollars from at least 100 contributors.

Qualifying contributions must be made by an individual registered to vote in this state, in an amount between 10 and 100 dollars, and in the form of a check. The contribution must include the name and address of the individual donor and be identified as a qualifying contribution.

The PDC must determine whether or not sufficient qualifying contributions have been received by a candidate for participation in the program.

Matching Funds: If a candidate who is not participating in the program expends in excess of a participating candidate's maximum allowable expenditures, the participating candidate is eligible for matching funds in the amount of the excess expenditure up to:

- four hundred eighty times the candidate filing fee for a supreme court candidate;
- forty times the candidate filing fee for a court of appeals candidate.

Matching funds must be disbursed within five calendar days after a candidate requests disbursement.

Independent expenditures that favor a nonparticipating candidate or oppose a participating candidate may be counted as expenditures by the nonparticipating candidate for the purposes of determining eligibility for matching funds.

Exploratory Funds: Potential candidates may raise funds during the exploratory period beginning 120 days before the date when filing for the office is first permitted and ending at the close of the regular filing period.

Exploratory contributions may not exceed 100 dollars per donor and may only be accepted from individual donors.

The total amount of exploratory funds is limited to 20 thousand dollars for supreme court candidates and 10 thousand dollars for court of appeals candidates.

Candidates may contribute no more than five thousand dollars of their personal money and may receive an aggregate total of five thousand dollars from immediate family members during the exploratory period.

The PDC must administer the program. Participating candidates are required to report all contributions and expenditures according to rules set by the PDC.

The judicial independence act account is created in the state treasury. Expenditures from the account may be used only for public financing of judicial election campaigns. Monies in the account may be spent only after appropriation.

The prohibition on the use of public funds for campaign purposes is amended to allow the public funding of judicial campaigns for the purposes of this pilot program.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Government Operations & Elections): Allows contributions to be made with a credit or debit card so long as the name and address associated with the card match that of the registered voter making the contribution.

Removes the Commission on Judicial Conduct as the entity responsible for creating the judicial independence act pledge.

Clarifies that the signing of the pledge by a candidate is voluntary and that nonparticipating candidates are not prohibited from signing the pledge.

Court of Appeals candidates are eligible for primary disbursement if they are in a two-candidate primary.

Requires that a nonparticipating candidate who has a publicly financed opponent report total expenditures electronically to the PDC within 24 hours of the date his or her total amount of expenditures first exceed, 80 percent of the maximum permitted for publicly financed candidates.

Once a nonparticipating candidate's expenditures exceed 80 percent of the maximum permitted, the nonparticipating candidate must report, within 24 hours, each time his or her expenditures equal five thousand dollars or more.

For purposes of calculating matching funds, independent expenditures or electioneering communications with a fair market value of \$1,000 or more that support a candidate or oppose a participating candidate must be reported by the sponsor or person making the expenditure within 24 hours of the date the advertising or activity is first ordered.

A participating candidate who violates the terms of the program may be subject to a civil penalty of no more than \$20,000 for each violation.

Any person or entity who violates any reporting requirements of the program resulting in the delay of distribution of matching funds may be subject to a civil penalty of no more than \$100,000 for each violation.

Clarifies that exploratory funds, qualifying contributions and any disbursements from the program may only be used for purposes directly related to a candidate's campaign.

Requires a candidate who fails to qualify for participation in the program to return all qualifying contributions to the individual donors within 30 calendar days of receiving notice of non-qualification.

Requires a candidate who qualifies but later withdraws from the program or is found ineligible to return all qualifying contributions to the individual donors within seven calendar days of withdrawal or ineligibility and repay all public funds disbursed within seven calendar days.

Participating candidates must return all unused funds within 30 calendar days after the general election.

In the event a participating candidate receives the maximum amount of matching funds and the amount spent by and on behalf of the participating candidate is less than the amount spent by: (i) a nonparticipating candidate; (ii) in support of an opposing candidate; and (iii) in opposition to the participating candidate, such participating candidates may receive additional excess funds in the Act account if funds are available.

In the event a participating candidate receives the maximum amount of matching funds and otherwise qualifies for additional funds and the funds from the Act account have been fully distributed, the limitations on raising or receiving funds no longer apply.

Adds language clarifying that the Judicial Independence Act is a six year pilot, expiring on January 1, 2013.

Requires the Governor to report to the Legislature on the effectiveness of the Judicial Independence Act and make recommendations on whether or not the program should continue. The report is due January 1, 2012.

Includes a null and void clause.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Campaigns are now about money and money gives a louder voice to those who can contribute or raise more of it. Money provides greater access to media and creates a climate of greater influence, either real influence or perceived influence. Candidates spend less time discussing the issues and more time raising money. The electoral process in our country and in our state is greatly influenced by a few large donors. The average citizen has less influence when such large quantities of money are needed to run a statewide campaign. There is a concern that such large sums of money in judicial campaigns can potentially impact judicial autonomy. Judicial independence is at risk. Judges are required to be impartial. How can a judge be impartial if he or she must spend so much time raising money? We don't want our impartial officers of the courts making promises to interested parties in order to secure financial support. The judiciary should be beholden to no one. There is also a great concern about the amount of money coming in from out of state in an effort to influence the outcome of a statewide judicial campaign. This bill will protect the judiciary from special interests. The bill proposes a six year pilot program.

CON: This bill will take the support of judicial campaigns out of the hands of the citizens of this state and put it in the hands of the government of this state. If the Governor thinks this is such a great idea, why doesn't she lead by example? Supreme court races cost \$0.40 per vote. The last gubernatorial race cost approximately \$4.60 per vote. This bill seriously under-funds campaigns. There is no possible way to run a statewide campaign for \$84,000. The bill is incumbent protection. The incumbent has all the name recognition. The fact that this bill does not allow money to be raised over the Internet is a serious problem. The bill increases the power of special interest. The bill eliminates the ability of the people of this state to criticize the judiciary in the most meaningful way, in the context of an election.

Persons Testifying: PRO: Senator Oemig, prime sponsor; Antonio Ginatta, Office of the Governor; Phil Talmadge, Washington Public Campaigns; Representative Mark Miloscia.

CON: Richard Sanders; Alex B. Hays, Constitutional Law Political Action Committee.

Signed in, Unable to Testify & Submitted Written Testimony: Barbara Seitle, League of Women's Voters; Craig Salins, John King, Terry Sullivan, Bill McQuaide, Marcee Stone, Washington Public Campaigns; Todd Iverson, America In Solidarity; Charles Wiggins, Washington Chapter, American Judicature Society; Bill Maurer, Institute for Justice; John R. Ruhl, King County Bar Association.